

## § 1980.341

standards contained in paragraph IV C of exhibit D of subpart A of part 1924.

(c) *Development.* The Lender and borrower are responsible for seeing that the loan purposes are accomplished and loan funds are properly utilized. This includes, but is not limited to, seeing that:

(1) The applicable development standards are adhered to;

(2) Drawings and specifications are certified and complied with;

(3) Adequate water, electric, heating, waste disposal, and other necessary utilities and facilities are obtained;

(4) Equal opportunity and non-discrimination requirements are met, (see § 1980.317); and

(5) A builder's warranty is issued when new construction, repair, or rehabilitation is involved, which provides for at least 1 year's warranty from the date of completion or acceptance of the work.

### § 1980.341 Inspections of construction and compliance reviews.

(a) *Qualified inspectors.* Inspections will be made during construction by a construction inspector deemed qualified and approved by the Lender. A qualified inspector is one that a reasonable person would hire to perform an inspection of his/her own dwelling.

(b) *Inspections.* Inspections shall be done by a party the Lender determines to be qualified, such as a HUD approved fee inspector. The sale agreement shall identify which party (i.e., purchaser or seller) is responsible to obtain and pay for required inspections and certifications. In connection with inspections involving construction contracts, equal opportunity and nondiscrimination compliance reviews must be made as required by § 1980.317.

(1) For existing dwellings, inspections must be made to determine that the dwelling:

(i) Meets the current requirements of HUD Handbooks 4150.1 and 4905.1 (available from the HUD Ordering Desk 1-800-767-7468).

(ii) Meets the thermal standards per § 1980.313(f).

(2) For a newly constructed dwelling, when construction is planned, the Lender must see that the following inspections are made in addition to any

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additional inspections the Lender deems appropriate:

(i) When footings and foundations are ready to be poured but prior to back-filling.

(ii) When shell is closed in but plumbing, electrical, and mechanical work are still exposed.

(iii) When construction is completed prior to occupancy.

(iv) Inspections under paragraphs (b)(2) (i) and (ii) of this section are not required when the builder supplies an insured 10 year warranty plan acceptable under the requirements of exhibit L of subpart A of part 1924.

(c) *Water and water/waste disposal.* The Lender will see that the water and water/waste disposal systems have been approved by a state or local government agency.

### §§ 1980.342–1980.344 [Reserved]

### § 1980.345 Applicant eligibility requirements for a guaranteed loan.

Applicants who meet the requirements of this section are eligible for a loan guaranteed under this subpart. Applicants desiring loan assistance as provided in this subpart must file loan applications with a Lender that meets the requirements set forth in § 1980.309. The Lender may accept applications filed through its agents, correspondents, branches, or other institutions. The Lender must have at least one personal interview with the applicant to verify the information on the application and to obtain a complete picture of the applicant's financial situation.

(a) *Eligible income.* The applicant's adjusted annual income determined in accordance with § 1980.348 may not exceed the applicable income limit contained in exhibit C of FmHA Instruction 1980-D (available in any RHS office) at the time of issuance of the conditional commitment. Adjusted annual income is used to determine eligibility for the RHS loan guarantee.

(b) *Adequate and dependable income.* The applicant (and coapplicant, if applicable) has adequate and dependably available income. The applicant's history of income and the history of the typical annual income of others in the area with similar types of employment will be considered in determining

whether the applicant's income is adequate and dependable.

(1) A farm or nonfarm business loss must be considered in determining repayment ability.

(2) A loss may not be used to offset other income in order to qualify for or increase the amount of RHS assistance.

(c) *Determining repayment ability.* In considering whether the applicant has adequate repayment ability, the Lender must calculate a total debt ratio. The applicant's total debt ratio is calculated by dividing the applicant's monthly obligations by gross monthly income.

(1) Monthly obligation consists of the principal, interest, taxes, and insurance (PITI) for the proposed loan (less any interest assistance under this program or any other assistance from a state or county sponsored program when such payments are made directly to the Lender on the applicant's behalf), homeowner and other assessments, and the applicant's long term obligations. Long term obligations include those obligations such as alimony, child support, and other obligations with a remaining repayment period of more than 6 months and other shorter term debts that are considered to have a significant impact on repayment ability.

(i) *Cosigned obligations.* Debts which have been cosigned by the applicant for another party must be considered unless the applicant provides evidence (usually canceled checks of the co-obligor or other third party) that it has not been necessary for the applicant to make any payments over the past 12 months.

(ii) *Liability on a previous mortgage.* When the applicant has disposed of a property through a sale, trade, or transfer without a release of liability, the debt must be considered unless the applicant provides evidence (usually canceled checks of the new owners) that the new owners have successfully made all payments over the past 12 months.

(2) Income, for the purpose of determining the total debt ratio, includes the total qualifying income of the applicant, coapplicant, and any other member of the household who will be a party to the note.

(i) An applicant's qualifying income may be different than the "adjusted annual income" which is used to determine program eligibility. In considering qualifying income, the Lender must determine whether there is a historical basis to conclude that the income is likely to continue. Typically, income of less than 24 months duration should not be included in qualifying income. If the applicant is obligated to pay child care costs, the amount of any Federal tax credit for which the applicant is eligible may be added to the applicant's qualifying income.

(ii) In considering income that is not subject to Federal income tax, the amount of tax savings attributable to the nontaxable income may be added for use with the repayment ratios. Adjustments for other than the applicable tax rate are not authorized. The Lender must verify that the income is not subject to Federal income tax and that the income (and its nontax status) is likely to continue. The Lender must fully document and support any adjustment made.

(3) The applicant meets RHS requirements for repayment ability when the applicant's total debt ratio is less than or equal to 41 percent and the ratio of the proposed PITI to income does not exceed 29 percent.

(4) Applicants who do not meet the requirements of this section will be considered ineligible unless another adult in the household has adequate income and wishes to join in the application as a coapplicant. The combined incomes and debts then may be considered in determining repayment ability.

(5) If the applicant's total debt ratio and/or PITI ratio exceed the maximum authorized ratio, the Lender may request RHS concurrence in allowing a higher ratio based on compensating factors. Acceptable compensating factors include but are not limited to the applicant having a history over the previous 12 month period of devoting a similar percentage of income to housing expense to that of the proposed loan, or accumulating savings which, when added to the applicant's housing expense and shows a capacity to make payments on the proposed loan. A low total debt ratio, by itself, does not compensate for a high PITI.

(d) *Credit history.* The applicant must have a credit history which indicates a reasonable ability and willingness to meet obligations as they become due.

(1) Any or all of the following are indicators of an unacceptable credit history unless the cause of the problem was beyond the applicant's control and the criteria in paragraph (d)(3) of this section are met:

(i) Incidents of more than one debt payment being more than 30 days late if the incidents have occurred within the last 12 months. This includes more than one late payment on a single account.

(ii) Loss of security due to a foreclosure if the foreclosure has occurred within the last 36 months.

(iii) Outstanding tax liens or delinquent Government debts with no satisfactory arrangements for payments, no matter what their age as long as they are currently delinquent and/or due and payable.

(iv) A court-created or affirmed obligation (judgment) caused by non-payment that is currently outstanding or has been outstanding within the last 12 months.

(v) Two or more rent payments paid 30 days or more past due within the last 3 years.

(vi) Accounts which have been converted to collections within the last 12 months (utility bills, hospital bills, etc.).

(vii) Collection accounts outstanding, with no satisfactory arrangements for payments, no matter what their age as long as they are currently delinquent and/or due and payable.

(viii) Any debts written off within the last 36 months.

(2) The following will not indicate an unacceptable credit history:

(i) "No history" of credit transactions by the applicant.

(ii) A bankruptcy in which applicant was discharged more than 36 months before application.

(iii) A satisfied judgment or foreclosure with no loss of security which was completed more than 12 months before the date of application.

(3) The Lender may consider mitigating circumstances to establish the borrower's intent for good credit when

the applicant provides documentation that:

(i) The circumstances were of a temporary nature, were beyond the applicant's control, and have been removed (e.g., loss of job; delay or reduction in government benefits or other loss of income; increased expenses due to illness, death, etc.); or

(ii) The adverse action or delinquency was the result of a refusal to make full payment because of defective goods or services or as a result of some other justifiable dispute relating to the goods or services purchased or contracted for.

(e) *Previous RHS loan.* RHS shall determine whether the applicant has had a previous RHS debt which was settled, or is subject to settlement, or whether RHS otherwise suffered a loss on a loan to the applicant. If RHS suffered any loss related to a previous loan, a loan guarantee shall not be issued unless RHS determines the RHS loss was beyond the applicant's control, and any identifiable reasons for the loss no longer exist.

(f) *Other Federal debts.* The loan approval official will check HUD's Credit Alert Interactive Voice Response System (CAIVRS) to determine if the applicant is delinquent on a Federal debt. The Lender will clearly document both its CAIVRS identifying number and the borrower and coborrower's CAIVRS access code near the signature line on the mortgage application form. No decision to deny credit can be based solely on the results of the CAIVRS inquiry. If CAIVRS identifies a delinquent Federal debt, the Lender will immediately suspend processing of the application. The applicant will be notified that processing has been suspended and will be asked to contact the appropriate Federal agency, at the telephone number provided by CAIVRS, to resolve the delinquency. When the applicant provides the Lender with official documentation that the delinquency has been paid in full or otherwise resolved, processing of the application will be continued. An outstanding judgment obtained by the United States in a Federal court (other than the United States Tax Court), which has been recorded, shall cause the applicant to be ineligible to receive a loan guarantee

until the judgment is paid in full or otherwise satisfied. RHS loan guarantee funds may not be used to satisfy the judgment. If the judgment remains unsatisfied or if the applicant is delinquent on a Federal debt and is unable to resolve the delinquency, the Lender will reject the applicant.

**§ 1980.346 Other eligibility criteria.**

The applicant must:

(a) Be a person who does not own a dwelling in the local commuting area or owns a dwelling which is not structurally sound, functionally adequate;

(b) Be without sufficient resources to provide the necessary housing and be unable to secure the necessary conventional credit without an RHS guarantee upon terms and conditions which the applicant could reasonably be expected to fulfill.

(c) Be a natural person (individual) who resides as a citizen in any of the 50 States, the Commonwealth of Puerto Rico, the U.S. Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Marianas, Federated States of Micronesia, and the Republics of the Marshall Islands and Palau, or a noncitizen who resides in one of the foregoing areas after being legally admitted to the U.S. for permanent residence or on indefinite parole.

(d) Possess legal capacity to incur the loan obligation and have reached the legal age of majority in the state or have had the disability of minority removed by court action.

(e) Have the potential ability to personally occupy the home on a permanent basis. Because of the probability of their moving after graduation, full-time students will not be granted loans unless:

(1) The applicant intends to make the home his or her permanent residence and there are reasonable prospects that employment will be available in the area after graduation, and

(2) An adult member of the household will be available to make inspections if the home is being constructed.

**§ 1980.347 Annual income.**

Annual income determinations will be thoroughly documented in the Lender's casefile. Historical data based on the past 12 months or previous fiscal

year may be used if a determination cannot logically be made. Annual income to be considered includes:

(a) Current verified income, either part-time or full-time, received by any applicant/borrower and all adult members of the household, including any coapplicant/coborrower.

(b) If any other adult member of the household is not presently employed but there is a recent history of such employment, that person's income will be considered unless the applicant/borrower and the person involved sign a statement that the person is not presently employed and does not intend to resume employment in the foreseeable future, or if interest assistance is involved, during the term of the Interest Assistance Agreement.

(c) Income from such sources as seasonal type work of less than 12 months duration, commissions, overtime, bonuses, and unemployment compensation must be computed as the estimated annual amount of such income for the upcoming 12 months. Consideration should be given to whether the income is dependable based on verification by the employer and the applicant's history of such income over the previous 24 months.

(d) The following *are* included in annual income:

(1) The gross amount, before any payroll deductions, of wages and salaries, overtime pay, commissions, fees, tips, bonuses, and other compensation for personal services of all adult members of the household.

(2) The *net* income from operation of a farm, business, or profession. Consider the following:

(i) Expenditures for business or farm expansion and payments of principal on capital indebtedness shall not be used as deductions in determining income. A deduction is allowed in the manner prescribed by IRS regulations only for interest paid in amortizing capital indebtedness.

(ii) Farm and nonfarm business losses are considered "zero" in determining annual income.

(iii) A deduction, based on straight line depreciation, is allowed in the manner prescribed by IRS regulations for the exhaustion, wear and tear, and obsolescence of depreciable property